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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,213	01/28/2004	Scott S. McGowen	023829-0255	7634

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EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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03/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/765,213	Applicant(s) MCGOWEN ET AL.	
	Examiner C. SAYALA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/28/2007</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4, 6-12, 16-22, 24-40, 43-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Freese (US Patent 3416928).

Freese teaches mixing urea prills, which are between 10 mesh and 30 mesh (col. 1, lines 60-70) with ruminant feed formulations to form a free-flowing non-segregated mixture that is pelleted by conventional means. The feed supplements are shown at col. 3, example 1. Note col. 2, line 14 + which teaches the importance of the size of the urea prills. Urea amounts are given as 1-12 wt % (col. 2, line 63).

Claims 6, 8 etc recite a fertilizer grade urea. The patent does not specifically disclose the grade of the urea, but the burden is being shifted to applicant to show that:

- 1) the urea of the reference is only food grade and cannot be used as a fertilizer
- 2) that a criticality exists in using a fertilizer grade urea over a food grade urea, failing which, it appears that one is obvious over the other.

As for the claims such as 33-35 that recite physical characteristics of sphericity and Waddell roundness, the Office is not equipped to prepare prior art products and compare them with the claimed product and since applicant has chosen to describe the product by using such physical characteristics, the burden is being shifted to applicant to show that the product patentably differs by virtue of such characteristics.

2. Claims 1-4, 6-14, 16-22, 24-51, 53-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilding et al. (US Patent 3600188).

Example 1 of Wilding et al. teaches taking "finely ground" urea and pelleting it with proteinaceous soybean grits. Protein materials are shown at lines 10 +, col. 3, with amounts of urea as 25-65% (col. 3, line 25). Note example 8, which teaches mixing hay, soy bean hulls and urea. If the product is "finely ground", then it inherently contains the particle sizes claimed herein. Alternatively, if the product is being "finely ground", then to grind it to a size that is required for being pelleted with urea, would have been obvious to one of ordinary skill in the art of pelleting such materials.

Claims 6, 8 etc recite a fertilizer grade urea. The patent does not specifically disclose the grade of the urea, but the burden is being shifted to applicant to show that:

- 3) the urea of the reference is only food grade and cannot be used as a fertilizer
- 4) that a criticality exists in using a fertilizer grade urea over a food grade urea, failing which, it appears that one is obvious over the other.

As for the claims such as 33-35 that recite physical characteristics of sphericity and Waddell roundness, the Office is not equipped to prepare prior art products and compare them with the claimed product and since applicant has chosen to describe the product by using such physical characteristics, the burden is being shifted to applicant to show that the product patentably differs by virtue of such characteristics.

3. Claims 1-4, 6-14, 16-22, 24-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 02/06186.

WO 02/06186 describes crushing waste material such as animal waste, grain by-products, slaughterhouse waste, which would include litter, hay and protein, and mixing urea, wherein the urea is up to about 80%. The urea is said to be in the form of prills of different grades or it is powdery (page 3, last 2 paragraphs). The patent teaches that the organic material is crushed to a particle size of less than 2 or 1 mm depending on the desired product size. The urea size is given as powdery or prills but nothing more, and therefore, they must inherently be of the particle size as claimed herein.

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Alternatively, if the organic matter is crushed to the same claimed size as those for urea, then to crush the urea to the size disclosed pertaining to the organic matter would have been obvious, since the patent teaches that the organic material is crushed to a particle size depending on the desired product size.

Claims 6, 8 etc recite a fertilizer grade urea. The patent does not specifically disclose the grade of the urea, but the burden is being shifted to applicant to show that:

- 5) the urea of the reference is only food grade and cannot be used as a fertilizer
- 6) that a criticality exists in using a fertilizer grade urea over a food grade urea, failing which, it appears that one is obvious over the other.

As for the claims such as 33-35 that recite physical characteristics of sphericity and Waddell roundness, the Office is not equipped to prepare prior art products and compare them with the claimed product and since applicant has chosen to describe the product by using such physical characteristics, the burden is being shifted to applicant to show that the product patentably differs by virtue of such characteristics.

4. Claims 5, 15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freese or Wilding et al. or WO '186 in view of Dancy and Ray, Jr. et al. (US Patent 5340598).

Freese or Wilding et al. or WO '186 do not teach the use of a roller mill but Dancy teaches a variety of mills for crushing compounds (col. 4, line 27+), and Hay, Jr. et al. teach (col. 14, lines 40-43) that grinding with rolling mills ensures smoothness; then it would have been obvious to one of ordinary skill in the art to select the desired mill from

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those customarily used in the art depending on its function as shown, such selection being within the ambit of the artisan.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Baskin teaches particulate urea is sold as prills in the same size as claimed. See col. 2, lines 28-35. Raynal teaches urea of feed grade is generally of powdery nature (col. 1, lines 50-52).

Barham et al. at col. 11, lines 10+ teach grinding down feed grade urea to 450 microns, which is in the claimed range, showing that grinding down urea to the same size as claimed herein was already known in the art, especially when the urea was mixed with grain.

Watkins shows grinding prills of urea or large sizes of urea to blend them with micronutrients or silage or seed and to granulate the blend. Note the size that all the materials are ground down to 100 to 325 mesh, that coincides with the claimed particle size. See col. 6, lines 12-24, col. 5, lines 10-11.

Such prior art references render obvious the particle size as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/
Primary Examiner, Art Unit 1794